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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,009	04/20/2001	Steven Duane Myers	1475	2733

28004 7590 11/17/2004  
SPRINT  
6391 SPRINT PARKWAY  
KSOPHT0101-Z2100  
OVERLAND PARK, KS 66251-2100

EXAMINER

CONTEE, JOY KIMBERLY

ART UNIT	PAPER NUMBER
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2686

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/839,009

Applicant(s)

MYERS, STEVEN DUANE

Examiner

Joy K Contee

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,9-13 and 20-28 is/are rejected.
- 7) ☒ Claim(s) 3-5,7,8,14-16,18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1,2,6,9-13,17 and 21-28 have been considered but are moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,6,10-13,17,21-24 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busuioc et al. (Busuioc), U.S. Patent No. 6,151,309, previously used, in view of Kilp, U.S. Patent No. 6,463,142.

Regarding claims 1 and 12, Busuioc discloses a software product (and method) for qualifying communication devices for broadband wireless services, comprising:

qualification software (i.e., reads on intelligent software systems or agents) configured when executed by at least one processor to direct the at least one processor to identify requirements (i.e., bandwidth availability) of a broadband wireless service; and a software storage medium (i.e., inherently the software system or agent is stored as it has a distributed architecture) configured to store the qualification software (col. 1, lines 47-55).

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Busuioc fails to explicitly disclose execute an application to determine configuration information for a first communication device (mobile), and perform a comparison of the configuration information to the requirements of the broadband wireless service to determine if the first communication device is qualified to receive the broadband wireless service.

In a similar field of endeavor, Kilp discloses an automatic proxy server in a messaging system wherein the service discovery layer of a mobile unit determines the capabilities of the mobile unit (i.e., reads on determining configuration information for the first communication device) (col. 4, lines 51-61). The details of the service discovery layer depend on the specific external messaging system being communicated with and the particular protocol used for establishing communication between the mobile unit and stationary unit (i.e. reads on comparing the configuration information of the mobile unit to the requirements of the broadband wireless service) (col. 4, line 61 to col. 5, line 6).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc to include software means within the mobile unit that would include a service discovery layer for the purpose of determining capabilities of the mobile unit such that messages using a particular protocol could be received or accessed by the mobile unit.

Regarding claims 2 and 13, Busuioc as modified by Kilp disclose the software product of claims 1 and 12, wherein a second communication device (i.e., reads on "another agents") is configured to execute the qualification software to:

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identify the requirements of the broadband wireless service (see Busuoc col. 4, lines 7-13);

transmit the application to the first communication device (see Busuoc col. 4, lines 47-53);

receive the configuration information from the first communication device (see Busuoc col. 4, lines 7-13); and

perform the comparison to determine if the first communication device is qualified to receive the broadband wireless service (see Busuoc col. 3, line 60 to col. 4, line 13).

Regarding claims 6 and 17, Busuoc discloses the software product of claims 1 and 13 wherein a second communication device is configured to execute the qualification software to: identify the requirements of the broadband wireless service; and (see Busuoc col. 4, lines 7-13); transmit the application to the first communication device (see Busuoc col. 4, lines 47-53).

Regarding claims 10 and 21, Busuoc as modified by Kilp disclose the software product of claims 1 and 12, wherein the qualification software is further configured to direct the at least one processor to determine upgrades for the first communication device based on the comparison (col. 4, lines 7-13).

Regarding claims 11 and 22, Busuoc as modified by Kilp disclose the software product of claim 10 wherein the qualification software is further configured to direct the at least one processor to determine business information for businesses that provide the upgrades (see Busuoc col. 9, lines 3-17).

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Regarding claim 23, Busuioc as modified by Kilp disclose a communication device qualification system, as applied in the other independent claims 1 and 12 and additionally discloses

an interface configured to receive the application from the processing system, transmit the application to the first communication device, receive the configuration information from the first communication device, and transfer the configuration information to the processing system (see Busuoc col.3, lines 52-59).

Regarding claim 24, Busuioc as modified by Kilp disclose the communication device qualification system of claim 23 wherein the processing system is further configured to generate results based on the comparison and wherein the interface is further configured to transmit the results, the configuration information, and the requirements to the first communication device for display by the first communication device (see Busuoc col. 9, lines 3-10).

Regarding claim 27, Busuioc discloses the communication device qualification system of claim 23 wherein the processing system is further configured to determine upgrades for the communication device based on the comparison (i.e., reads on based on range of offered services) (see Busuoc col. 9, lines 1-16).

Regarding claim 28, Busuioc discloses the communication device qualification system of claim 27 wherein the processing system is further configured to determine business information for businesses that provide the upgrades (see Busuoc col. 9, lines 1-16).

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4. Claims 9,20,25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busuioc and Kilp, in view of Mayo et al. (Mayo), U.S. Patent No. 6,529,936.

Regarding claims 9, 20 and 26, Busuioc discloses the software product of claims 1,12 and 24 but fails to disclose wherein the application comprises an applet.

In a similar field of endeavor, Mayo discloses wherein the application comprises an applet (col. 9, lines 1-5).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc and Kilp to include an applet user interface object for accessing an URL as is known in the art.

Regarding claim 25, Busuioc discloses the software product of claim 23, but fails to disclose wherein the first communication device is configured to execute the qualification software to format the results, the configuration information, and the requirements based on HyperText Transfer Protocol (HTTP) format.

In a similar field of endeavor, Mayo discloses wherein the first communication device is configured to execute the qualification software to format the results, the configuration information, and the requirements based on HyperText Transfer Protocol (HTTP) format(col. 4,lines 36-43).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc and Kilp to include configuration information in HTTP format for the purpose of implementing Internet technologies as is known in the art.

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***Allowable Subject Matter***

5. Claims 3-5,7,8,14-16,18,19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Krishnan, U.S. Patent No. 5,924,026, discloses an exchange of system and terminal capabilities over the same analog control channel.

Maupin, U.S. Patent No. 6,600,917, discloses a telecommunications network broadcasting of service capabilities.

Skog, U.S. Patent No. 6,275,692, discloses a server request including code for customizing service to requesting cellular mobile station.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K Contee whose telephone number is 703-308-0149. The examiner can normally be reached on M (alternating), T & Th, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703-305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Antes*  
JC

November 1, 2004

*Marsha D Banks-Harold*  
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